



DRC Guidelines For Observer Conduct

(Adopted by the Dispute Resolution Commission on May 8, 2009;
revised on September 10, 2011, May 6, 2020, August 7, 2020, and April 7, 2021.)

Guidelines for Applicants Fulfilling Observation Requirements

MSC Rule 8(a)(2)(c) requires all applicants seeking certification in the Superior Court Settlement Program to complete a specific number of observations of mediations.

FFS Rule 8(a)(5) requires all applicants seeking certification in the Family Financial Settlement Program to complete a specific number of observations of mediations.

1. The Rules provide that Attorney applicants are required to complete two observations. Either an observation of a DRC approved observation video, or an observation of a live mediated settlement conference conducted via remote technologies may qualify for one of the two required observations. A minimum of one observation shall be of a live, in-person, mediation*.
2. The Rules provide Non-Attorney applicants are required to complete five observations. An observation of a DRC approved observation video and an observation of a live mediated settlement conference conducted via remote technologies, or two observations of a live mediated settlement conference conducted via remote technologies, may qualify for two of the five required observations. A minimum of three observations shall be of a live, in-person, mediation*.

***Temporary Guidelines for Applicants Fulfilling Observation Requirements**

Due to COVID-19, MSC and FFS Rules, Rule 4 has been temporarily modified to provide a presumption of remote attendance for all mediated settlement conferences. The following

language will control applicant observation requirements until such time the Commission votes to modify this provision.

1. An Attorney applicant may conduct two required observations of a mediated settlement conference via remote technology or one observation of a DRC approved observation video and one observation of a live mediated settlement conference via remote technology.
2. A Non-Attorney applicant may conduct five required observations of a mediated settlement conference via remote technology or one observation of a DRC approved observation video and four observations of a live mediated settlement conference via remote technology.

Observations through Remote Technologies

The mediator conducting the mediated settlement conference shall ensure the observer is able to shadow the mediator at all times during the remote conference. For example, if the mediation is being conducted through the use of video technology and break-out rooms, the mediator shall bring the observer into each break-out room as they conduct the mediation. The observer shall have the opportunity to ask questions of the mediator, apart from the participants to the mediation, during and after the conference.

Observations through a DRC Approved Observation Video

The DRC approved observation video must be watched in its entirety by the applicant. The DRC shall determine how observation compliance is verified for each applicant.

To qualify as a DRC approved observational video the video must meet the following requirements:

1. be approved by the DRC to qualify as an observation pursuant to the MSC or FFS Program Rules;
 - a. a video will be approved for use for one program only (MSC or FFS) and will not be eligible for observation for multiple DRC programs.
2. be greater than 1.5 hours in length;
3. provide commentary throughout the video explaining the process, rules, standards, and how to handle situations as they arise within the video; and
4. be in compliance with the DRC Program Rules and Standards of Conduct.

The owner/producer of the video shall at no cost grant the DRC the authority to provide a copy of the video to any applicant seeking to meet the observation requirement for mediator certification in the MSC or FFS Program. The video shall be solely used for certification or training of mediators in North Carolina. The DRC shall not collect a fee for the use and/or distribution of the video.

Guidelines for Observer Conduct

When you are observing a mediation, please be considerate of the mediator who is helping you. During the conference, be as quiet and unobtrusive as possible and observe the following rules of conduct at all times:

1. Make every effort to be on time for the conference. If your schedule changes and you will not be able to attend, let the mediator know so they do not wait for you.
2. Dress appropriately. This is a court ordered proceeding.
3. Give your full attention to the conference. Cell phones and other similar devices are to be turned off during sessions and kept in a pocket, briefcase or handbag.
4. Do not try to talk to or to pass notes to the mediator while s/he is working. This disrupts the mediator's concentration.
5. During the conference, do not inject yourself into the negotiation's process or attempt to express any opinions unless you are expressly invited to do so by the mediator. If one or both of the parties ask you to value the case or to comment on their chances in court during either a joint or a caucus session, advise then that you are there only as an observer.
6. Do not make any suggestions about legal arguments to the attorneys either during or after the conference.
7. Observers, like the mediator, are to remain neutral. Avoid any statements or body language that would display any inclination on your part to favor one side or his/her arguments over that of the other.
8. Mediators are mindful of the clock and may not want to discuss what is happening with observers between caucus sessions. You should check with the mediator before the conference starts and ask when he or she prefers to take your questions or respond to your comments. For example, the mediator may be willing to talk with you between caucus sessions, during breaks, at lunch or after the mediation.
9. Remember that the mediation process is confidential. You should not reveal any confidential information that you learn in caucus to the other party during the conference or afterward. In addition, you should not speak to anyone after the conference regarding any statements made or conduct occurring there.
10. Observers should not use the mediation session as an opportunity to solicit any kind of business from either parties or attorneys present.

Observers who do not follow these Requirements for Observer Conduct, or for any other reason in the discretion of the mediator, may be asked to leave the conference and may have their conduct reported to the Commission.